

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER  
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE V.V.S.RAO**

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**WRIT PETITION No.11175 of 2003**

Between:

Anjuman -e-Islamiah, Vijayawada, Reg.No.971/93, rep. by its  
President Mohd.Feroze Taj, S/o. Sri Mohd.Hamidullah, r/o. 8-14-27,  
1st Floor,Koppulavari Street, vinchipet, Vijayawada, Krishna District.

**..... PETITIONER**

AND

- 1 The Government of Andhra Pradesh, rep. by its Secretary,  
Municipal Administration and Urban Development Authority,  
Secretariat Buildings, Hyderabad.
- 2 The Vijayawada, Mangalagiri, Guntur and Tenali Development  
Authority, rep. by its Vice Chairman, Vijayawada, Krishna District.
- 3 The Commissioner, Municipal Corporation of Vijayawada, Vijayawada,  
Krishna District.
- 4 The Commissioner of Police, Vijayawada Urban, Vijayawada,  
Krishna District.
- 5 The Andhra Pradesh State Wakf Board, rep. by its Chief Executive  
Officer, Haj House Complex, Opposite to Public Gardesn, Nampalli,  
Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, in the nature of Mandamus, declaring the action of the respondents 1 to 3 in desecrating the graves, demolishing compound wall, construction of the walls laying of sewerage canal in the Grave yard situated in N.T.S.No.666, Ward No.9, Block No.13, Durga Agraharam, Karlmarx Road (Eluru Road) Vijayawada, contrary to the directions granted by this Hon'ble Court in W.P.No. 20838 of 2002 dated 24-10-2002 is illegal, arbitrary, capricious and *mala fide*.

**Counsel for the Petitioner: MR. SYED SHAREEF AHMED**

### Counsel for the Respondent No.1: GP FOR MUNICIPAL ADMINISTRATION

**Counsel for the Respondent No.2: MR. P.M. GOPALA RAO, STANDING COUNSEL**

**Counsel for the Respondent No.3: MR. T.S. VENKATA RAMANA, STANDING COUNSEL**

**Counsel for the Respondent No.4: None appeared.**

**Counsel for the Respondent No.5: MR. ABDUL MUQEETH QURESHI**

### The Court made the following:

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**THE HON'BLE MR JUSTICE V.V.S.RAO**

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**WRIT PETITION No.11175 of 2003**

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**ORDER:**

The petitioner is Anjuman-e-Islamiah, Vijayawada, seeking a writ of Mandamus declaring the action of the respondents 1 to 4 in demolishing the compound wall and constructing the walls for laying sewerage canal in the grave yard in New Town Survey (NTS) No.666, Ward No.9, Block No.13, Durga Agraharam, Karlmarx Road (Eluru Road), Vijayawada is contrary to the directions issued by this Court in W.P. No.20838 of 2002 dated 24.10.2002.

The case of the petitioner in brief is that there is a grave yard in NTS No.666 admeasuring Acs.4.00 enclosed by compound wall, that the same is recorded in the Town Survey Records as Muslim burial ground, that when respondents 1 to 3 tried to demolish the compound wall for the purpose of widening the road, Nimra Mosque and Grave Yard Managing Committee filed W.P. No.20838 of 2002, that this Court disposed of the writ petition directing the respondents to follow the procedure contemplated under law, and that inspite of said directions the respondents with the assistance of fourth respondent and Reserve Police Protection Force trespassed into the burial ground and also dug graves making construction. As the term of the earlier committee expired, they are not taking any steps for filing contempt case and therefore the present writ petition is filed.

This Court while admitting the writ petition on 17.6.2003 passed an order of ad interim injunction restraining the respondents 1 to 4 for demolishing the compound wall and constructions of wall laying sewerage canal in the grave yard. The respondent 2 as well as respondent 3 has filed separate applications for vacating the orders of this Court and the matter was heard finally with the consent of all the Counsel.

In the counter affidavit filed by the second respondent, namely, Vijayawada,

Mangalagiri, Guntur and Tenali Urban Development Authority while denying the petition allegations it is stated that as per the revised master plan the Karlmarx road (Eluru Road), Vijayawada is shown as 100 feet, 110 feet and 120 feet in two stages and many of the owners have given their consent for widening the road. After obtaining such consent many of the structures were demolished on 16.9.2002. It is alleged that in the land where the widening of the road is proposed there are no graves in the small portion of the land and the second respondent to avoid dismantling of structures is using only that portion where there are no graves. The allegation that the second respondent demolished the structures is denied and that if the grave yard committee is not willing for widening of the road, the second respondent initiated action for acquiring the land and accordingly submitted proposal to Special Deputy Collector (Land Acquisition) for acquiring an extent of 715.94 Sq. yards. A categorical statement is made that the authority will follow due process of law as directed by this Court in W.P. No.20838 of 2002 dated 24.10.2002.

In the counter affidavit filed by the third respondent the locus standi of the petitioner is questioned on the ground that Nimra Mosque and Grave Yard Committee is representing the grave yard and therefore the petitioner has no locus standi. It is further stated that the road widening proposal is taken up for the welfare of the public at large and as the land belongs to Muslim grave yard, steps were taken to convince the managing committee members explaining the need for widening the road. It is also asserted that managing committee thereafter did not raise any objections but the President of the petitioner, who is a resident of Wynchipet is not at all concerned in the subject matter, has filed the present writ petition.

The fifth respondent herein has also filed a counter affidavit stating that the graveyard in question was notified as a wakf by publication in A.P. Gazette No.26 dated 28.6.1962 and that the second respondent came with police force and high handedly demolishing grave yard compound wall and on the intervention of local Muslims, the second respondent could not proceed further. It is also alleged that there is a threat of peace and tranquility and also wakf property of the graveyard. Along with the counter affidavit an inspection note on graveyard situated at Durga Argaharam, which is dated 14.11.2002, is annexed. The C.E.O. along with Assistant Engineer surveyed the graveyard and stated that the second respondent proposed to take up 13.3 feet width and 526 feet in length of graveyard including the compound wall for the purpose of road widening, that in the effected land there are several graveyards existing within the proposed road widening with the height of 3 to 4 feet and pakka building and that it is not possible to hand over the proposed land of grave yard for road widening. It appears the said note was directed to be placed before the A.P. Wakf Board.

Learned Counsel for the petitioner strenuously contends that the Muslim graveyard, which is recognized as wakf has to be preserved and no part of the graveyard can be taken for the purpose of road widening. He would urge that in Islam graveyards have sacred sanctity and are to be allowed to remain till the dooms day and nobody can desecrate Muslim graveyard even for the public purpose. **Per contra**, learned Standing Counsel for the respondent No.2 and learned Standing Counsel for the respondent No.3 contend that action is being initiated to acquire the land required

for road widening as directed by this Court in W.P.No.20838 of 2002. The learned Standing Counsel for A.P. Wakf Board supports the contention of the learned Counsel for petitioner.

The subject matter of the writ petition herein was already considered by this Court in earlier writ petition being W.P. No.20838 of 2002. The Secretary of Nimra Mosque and Graveyard Managing Committee challenged a notice dated 05.10.2002 issued by the Municipal Corporation seeking consent of the petitioner therein to hand over the property to an extent of Acs.0.04 cents in NTS No.666 for road widening. This Court disposed of the writ petition following the earlier Division Bench judgment in W.P. No.20884 of 1997 dated 03.2.1998. The Division Bench while deprecating the action of the parties in high handedly occupying private land or Government land in occupation of persons for the purpose of road widening without due process of law, laid down certain guidelines. One of the guidelines was that the authorities should be issued notice within 60 (sixty) days to occupants to file their objections and if any objections are raised, authorities were required to consider the objections by giving oral hearing. The authorities were also directed to acquire the land if necessary for the public purpose in accordance with law and not to resort to high-handed action to forcibly dispossess the persons in occupation either as owners or encroachers or lessees. After perusing the judgment of this Court in W.P. No.20838 of 2002 it becomes clear that the respondents are precluded from resorting to high-handed action. The respondents now contend that the matter was discussed with Managing committee of the graveyard and that the member of the Managing committee seeks to have convinced with the need for road widening (see Para 5 of the counter affidavit of third respondent). No reply affidavit is filed denying such allegations. Be that as it is, as this Court already passed a comprehensive order in the earlier writ petition, it is not necessary to pass same order again. The said order will hold good even for this writ petition filed by another organization allegedly representing the interests of users of graveyard. Therefore, this writ petition also is disposed of in terms of the judgment of this Court in W.P.No.20838 of 2002 and till the respondents follow due process of law, there shall be *status quo* as on today.

The writ petition, with the above observations and directions, is disposed of.

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3<sup>rd</sup> November, 2004. **V.V.S. RAO, J**

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To

1 The Secretary, Municipal Administration and Urban Development  
Authority, Government of Andhra Pradesh, Secretariat Buildings,  
Hyderabad.

2 The Vice Chairman, Vijayawada, Mangalagiri, Guntur and Tenali  
Development Authority, rep. by its Vice Chairman, Vijayawada,  
Krishna District.

3 The Commissioner, Municipal Corporation of Vijayawada, Vijayawada,  
Krishna District.

4 The Commissioner of Police, Vijayawada Urban, Vijayawada,  
Krishna District.

5 The Chief Executive Officer, Andhra Pradesh Wakf Board, Haj House  
Complex, Opposite to Public Gardesn, Nampalli, Hyderabad.

6 Two CCs to the Government Pleader for Municipal Administration,  
High Court Buildings, Hyderabad (O.U.T)

7 Two C.D. Copies.